

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1978

Introduced by Assembly Member Gonzalez

**(Coauthors: Assembly Members *Campos*, *Chu*, *Cristina Garcia*,
Lopez, *McCarty*, *Rodriguez*, *Santiago*, *Thurmond*, and *Weber*)**
(Coauthor: Senator Beall)

February 16, 2016

An act to amend Section 12940 of the Government Code, and to amend Section 1106 of, and to add Part 4.2 (commencing with Section 1420) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Gonzalez. Employment: property service workers.

Existing law establishes the Department of Industrial Relations in the Labor and Workforce Development Agency to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. Existing law establishes within the department the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing labor laws, including those relating to wage claims and employer retaliation. Existing law requires the Labor Commissioner, defined as the Chief of the Division of Labor Standards Enforcement,

to establish and maintain a field enforcement unit in order to ensure that minimum labor standards are met.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees, including a requirement that every employer establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements.

This bill would establish specific standards and protections for property service workers, to be known as the Property Service Workers Protection Act, and define terms for its purposes.

The bill would require the Labor Commissioner, no later than July 1, 2018, to develop worker and supervisor materials for a prescribed 4-hour training regarding sexual violence and sexual harassment and to make those materials available to employers, covered workers, and the public through, among other means, posting on its Internet Web site. The bill would require *the* commissioner, beginning July 1, 2019, to update ~~theses~~ *these* materials annually. The bill would, on and after July 1, 2018, require employers who provide janitorial services to have a system to require that covered workers and supervisors, at least annually, receive prescribed in-person training on workplace sexual violence and sexual harassment. The bill would require the commissioner to establish standards and requirements for trainers and recordkeeping relating to training. The bill would require the Labor Commissioner to develop minimum qualifications for trainers who provide the training.

The bill would require the Occupational Safety and Health Standards Board, by January 1, 2018, to adopt standards developed by the Division of Occupational Safety and Health, in consultation with a specified advisory group, that require an employer to adopt a workplace sexual violence and sexual harassment prevention plan as a part of its injury and illness prevention plan, to protect covered workers from workplace sexual violence and sexual harassment.

The bill would require the registration of employers conducting janitorial business, as prescribed, and establish specific authority for the Labor Commissioner to enforce and implement that requirement. The bill would set application and renewal fees. The bill would prohibit an employer, on or after ~~January~~ *July* 1, 2018, from conducting any janitorial business without a valid registration. The bill would require an employer to include specific information in the registration

application, subscribed and sworn to under penalty of perjury, thereby imposing a state-mandated local program by expanding the scope of the crime of perjury. The bill would prohibit the granting of registration under specific circumstances, authorize the director to deny, suspend, or void a registration in certain circumstances. The bill would require the commissioner, on and after July 1, 2018, to maintain on the commissioner's Internet Web site a regularly updated, searchable database of registered employers, and, on and after July 1, 2019, a searchable database regarding the compliance and enforcement activities of the department.

The bill would establish various compliance and enforcement provisions, including a requirement that the director establish a Property Services Compliance Unit to enforce the act. The bill would establish civil fines and provide for labor compliance agreements, stop order authority, audits, and investigations. The bill would impose a state-mandated local program by making it a crime to conduct any janitorial business without a valid registration, or to fail to observe a stop order.

The bill would require the deposit of registration fees and specific civil fines in the State Janitorial Contractor Registration Fund, which the bill would create, and make the moneys in the fund available, upon appropriation, for the reasonable costs of administering the registration of janitorial contractors and the costs and obligations associated with the administration and enforcement of the bill by the commissioner. The bill, to provide adequate cash flow for those purposes, would authorize the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, to approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund.

The bill would make conforming changes regarding the definition of an employer.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12940 of the Government Code is
2 amended to read:

3 12940. It is an unlawful employment practice, unless based
4 upon a bona fide occupational qualification, or, except where based
5 upon applicable security regulations established by the United
6 States or the State of California:

7 (a) For an employer, because of the race, religious creed, color,
8 national origin, ancestry, physical disability, mental disability,
9 medical condition, genetic information, marital status, sex, gender,
10 gender identity, gender expression, age, sexual orientation, or
11 military and veteran status of any person, to refuse to hire or
12 employ the person or to refuse to select the person for a training
13 program leading to employment, or to bar or to discharge the
14 person from employment or from a training program leading to
15 employment, or to discriminate against the person in compensation
16 or in terms, conditions, or privileges of employment.

17 (1) This part does not prohibit an employer from refusing to
18 hire or discharging an employee with a physical or mental
19 disability, or subject an employer to any legal liability resulting
20 from the refusal to employ or the discharge of an employee with
21 a physical or mental disability, where the employee, because of
22 his or her physical or mental disability, is unable to perform his
23 or her essential duties even with reasonable accommodations, or
24 cannot perform those duties in a manner that would not endanger
25 his or her health or safety or the health or safety of others even
26 with reasonable accommodations.

27 (2) This part does not prohibit an employer from refusing to
28 hire or discharging an employee who, because of the employee's
29 medical condition, is unable to perform his or her essential duties
30 even with reasonable accommodations, or cannot perform those
31 duties in a manner that would not endanger the employee's health
32 or safety or the health or safety of others even with reasonable
33 accommodations. Nothing in this part shall subject an employer
34 to any legal liability resulting from the refusal to employ or the
35 discharge of an employee who, because of the employee's medical
36 condition, is unable to perform his or her essential duties, or cannot
37 perform those duties in a manner that would not endanger the

1 employee's health or safety or the health or safety of others even
2 with reasonable accommodations.

3 (3) Nothing in this part relating to discrimination on account of
4 marital status shall do either of the following:

5 (A) Affect the right of an employer to reasonably regulate, for
6 reasons of supervision, safety, security, or morale, the working of
7 spouses in the same department, division, or facility, consistent
8 with the rules and regulations adopted by the commission.

9 (B) Prohibit bona fide health plans from providing additional
10 or greater benefits to employees with dependents than to those
11 employees without or with fewer dependents.

12 (4) Nothing in this part relating to discrimination on account of
13 sex shall affect the right of an employer to use veteran status as a
14 factor in employee selection or to give special consideration to
15 Vietnam-era veterans.

16 (5) (A) This part does not prohibit an employer from refusing
17 to employ an individual because of his or her age if the law
18 compels or provides for that refusal. Promotions within the existing
19 staff, hiring or promotion on the basis of experience and training,
20 rehiring on the basis of seniority and prior service with the
21 employer, or hiring under an established recruiting program from
22 high schools, colleges, universities, or trade schools do not, in and
23 of themselves, constitute unlawful employment practices.

24 (B) The provisions of this part relating to discrimination on the
25 basis of age do not prohibit an employer from providing health
26 benefits or health care reimbursement plans to retired persons that
27 are altered, reduced, or eliminated when the person becomes
28 eligible for Medicare health benefits. This subparagraph applies
29 to all retiree health benefit plans and contractual provisions or
30 practices concerning retiree health benefits and health care
31 reimbursement plans in effect on or after January 1, 2011.

32 (b) For a labor organization, because of the race, religious creed,
33 color, national origin, ancestry, physical disability, mental
34 disability, medical condition, genetic information, marital status,
35 sex, gender, gender identity, gender expression, age, sexual
36 orientation, or military and veteran status of any person, to exclude,
37 expel, or restrict from its membership the person, or to provide
38 only second-class or segregated membership or to discriminate
39 against any person because of the race, religious creed, color,
40 national origin, ancestry, physical disability, mental disability,

1 medical condition, genetic information, marital status, sex, gender,
2 gender identity, gender expression, age, sexual orientation, or
3 military and veteran status of the person in the election of officers
4 of the labor organization or in the selection of the labor
5 organization's staff or to discriminate in any way against any of
6 its members or against any employer or against any person
7 employed by an employer.

8 (c) For any person to discriminate against any person in the
9 selection, termination, training, or other terms or treatment of that
10 person in any apprenticeship training program, any other training
11 program leading to employment, an unpaid internship, or another
12 limited duration program to provide unpaid work experience for
13 that person because of the race, religious creed, color, national
14 origin, ancestry, physical disability, mental disability, medical
15 condition, genetic information, marital status, sex, gender, gender
16 identity, gender expression, age, sexual orientation, or military
17 and veteran status of the person discriminated against.

18 (d) For any employer or employment agency to print or circulate
19 or cause to be printed or circulated any publication, or to make
20 any nonjob-related inquiry of an employee or applicant, either
21 verbal or through use of an application form, that expresses,
22 directly or indirectly, any limitation, specification, or discrimination
23 as to race, religious creed, color, national origin, ancestry, physical
24 disability, mental disability, medical condition, genetic information,
25 marital status, sex, gender, gender identity, gender expression,
26 age, sexual orientation, or military and veteran status, or any intent
27 to make any such limitation, specification, or discrimination. This
28 part does not prohibit an employer or employment agency from
29 inquiring into the age of an applicant, or from specifying age
30 limitations, where the law compels or provides for that action.

31 (e) (1) Except as provided in paragraph (2) or (3), for any
32 employer or employment agency to require any medical or
33 psychological examination of an applicant, to make any medical
34 or psychological inquiry of an applicant, to make any inquiry
35 whether an applicant has a mental disability or physical disability
36 or medical condition, or to make any inquiry regarding the nature
37 or severity of a physical disability, mental disability, or medical
38 condition.

39 (2) Notwithstanding paragraph (1), an employer or employment
40 agency may inquire into the ability of an applicant to perform

1 job-related functions and may respond to an applicant's request
2 for reasonable accommodation.

3 (3) Notwithstanding paragraph (1), an employer or employment
4 agency may require a medical or psychological examination or
5 make a medical or psychological inquiry of a job applicant after
6 an employment offer has been made but prior to the
7 commencement of employment duties, provided that the
8 examination or inquiry is job related and consistent with business
9 necessity and that all entering employees in the same job
10 classification are subject to the same examination or inquiry.

11 (f) (1) Except as provided in paragraph (2), for any employer
12 or employment agency to require any medical or psychological
13 examination of an employee, to make any medical or psychological
14 inquiry of an employee, to make any inquiry whether an employee
15 has a mental disability, physical disability, or medical condition,
16 or to make any inquiry regarding the nature or severity of a physical
17 disability, mental disability, or medical condition.

18 (2) Notwithstanding paragraph (1), an employer or employment
19 agency may require any examinations or inquiries that it can show
20 to be job related and consistent with business necessity. An
21 employer or employment agency may conduct voluntary medical
22 examinations, including voluntary medical histories, which are
23 part of an employee health program available to employees at that
24 worksite.

25 (g) For any employer, labor organization, or employment agency
26 to harass, discharge, expel, or otherwise discriminate against any
27 person because the person has made a report pursuant to Section
28 11161.8 of the Penal Code that prohibits retaliation against hospital
29 employees who report suspected patient abuse by health facilities
30 or community care facilities.

31 (h) For any employer, labor organization, employment agency,
32 or person to discharge, expel, or otherwise discriminate against
33 any person because the person has opposed any practices forbidden
34 under this part or because the person has filed a complaint, testified,
35 or assisted in any proceeding under this part.

36 (i) For any person to aid, abet, incite, compel, or coerce the
37 doing of any of the acts forbidden under this part, or to attempt to
38 do so.

39 (j) (1) For an employer, labor organization, employment agency,
40 apprenticeship training program or any training program leading

1 to employment, or any other person, because of race, religious
2 creed, color, national origin, ancestry, physical disability, mental
3 disability, medical condition, genetic information, marital status,
4 sex, gender, gender identity, gender expression, age, sexual
5 orientation, or military and veteran status, to harass an employee,
6 an applicant, an unpaid intern or volunteer, or a person providing
7 services pursuant to a contract. Harassment of an employee, an
8 applicant, an unpaid intern or volunteer, or a person providing
9 services pursuant to a contract by an employee, other than an agent
10 or supervisor, shall be unlawful if the entity, or its agents or
11 supervisors, knows or should have known of this conduct and fails
12 to take immediate and appropriate corrective action. An employer
13 may also be responsible for the acts of nonemployees, with respect
14 to sexual harassment of employees, applicants, unpaid interns or
15 volunteers, or persons providing services pursuant to a contract in
16 the workplace, where the employer, or its agents or supervisors,
17 knows or should have known of the conduct and fails to take
18 immediate and appropriate corrective action. In reviewing cases
19 involving the acts of nonemployees, the extent of the employer's
20 control and any other legal responsibility that the employer may
21 have with respect to the conduct of those nonemployees shall be
22 considered. An entity shall take all reasonable steps to prevent
23 harassment from occurring. Loss of tangible job benefits shall not
24 be necessary in order to establish harassment.

25 (2) The provisions of this subdivision are declaratory of existing
26 law, except for the new duties imposed on employers with regard
27 to harassment.

28 (3) An employee of an entity subject to this subdivision is
29 personally liable for any harassment prohibited by this section that
30 is perpetrated by the employee, regardless of whether the employer
31 or covered entity knows or should have known of the conduct and
32 fails to take immediate and appropriate corrective action.

33 (4) (A) For purposes of this subdivision only, "employer" means
34 any person regularly employing one or more persons or regularly
35 receiving the services of one or more persons providing services
36 pursuant to a contract, or any person acting as an agent of an
37 employer, directly or indirectly, the state, or any political or civil
38 subdivision of the state, and cities. The definition of "employer"
39 in subdivision (d) of Section 12926 applies to all provisions of this
40 section other than this subdivision.

1 (B) Notwithstanding subparagraph (A), for purposes of this
2 subdivision, “employer” does not include a religious association
3 or corporation not organized for private profit, except as provided
4 in Section 12926.2.

5 (C) For purposes of this subdivision, “harassment” because of
6 sex includes sexual harassment, gender harassment, and harassment
7 based on pregnancy, childbirth, or related medical conditions.
8 Sexually harassing conduct need not be motivated by sexual desire.

9 (D) For purposes of this subdivision, on and after July 1, 2018:

10 (i) Any person or entity that contracts with a janitorial employer
11 as defined by subdivision (d) of Section 1421 of the Labor Code
12 who lacks a current and valid registration under Part 4.2
13 (commencing with Section 1420) of Division 2 of the Labor Code
14 on the date the person or entity enters into or renews a contract or
15 subcontract for janitorial services with the janitorial employer, is
16 an “employer” as defined by paragraph (4).

17 (ii) Any person or entity that contracts with a janitorial
18 employer, as defined by subdivision (d) of Section 1421 of the
19 Labor Code, who has a current and valid registration under Part
20 4.2 (commencing with Section 1420) of Division 2 of the Labor
21 Code on the date the person or entity enters into or renews a
22 contract or subcontract for janitorial services with the janitorial
23 employer, is presumed not to be an “employer” as defined by
24 paragraph (4) of the persons providing services pursuant to the
25 contract or subcontract for janitorial services.

26 (5) For purposes of this subdivision, “a person providing services
27 pursuant to a contract” means a person who meets all of the
28 following criteria:

29 (A) The person has the right to control the performance of the
30 contract for services and discretion as to the manner of
31 performance.

32 (B) The person is customarily engaged in an independently
33 established business.

34 (C) The person has control over the time and place the work is
35 performed, supplies the tools and instruments used in the work,
36 and performs work that requires a particular skill not ordinarily
37 used in the course of the employer’s work.

38 (k) For an employer, labor organization, employment agency,
39 apprenticeship training program, or any training program leading

1 to employment, to fail to take all reasonable steps necessary to
2 prevent discrimination and harassment from occurring.

3 (l) (1) For an employer or other entity covered by this part to
4 refuse to hire or employ a person or to refuse to select a person
5 for a training program leading to employment or to bar or to
6 discharge a person from employment or from a training program
7 leading to employment, or to discriminate against a person in
8 compensation or in terms, conditions, or privileges of employment
9 because of a conflict between the person's religious belief or
10 observance and any employment requirement, unless the employer
11 or other entity covered by this part demonstrates that it has explored
12 any available reasonable alternative means of accommodating the
13 religious belief or observance, including the possibilities of
14 excusing the person from those duties that conflict with his or her
15 religious belief or observance or permitting those duties to be
16 performed at another time or by another person, but is unable to
17 reasonably accommodate the religious belief or observance without
18 undue hardship, as defined in subdivision (u) of Section 12926,
19 on the conduct of the business of the employer or other entity
20 covered by this part. Religious belief or observance, as used in
21 this section, includes, but is not limited to, observance of a Sabbath
22 or other religious holy day or days, reasonable time necessary for
23 travel prior and subsequent to a religious observance, and religious
24 dress practice and religious grooming practice as described in
25 subdivision (q) of Section 12926. This subdivision shall also apply
26 to an apprenticeship training program, an unpaid internship, and
27 any other program to provide unpaid experience for a person in
28 the workplace or industry.

29 (2) An accommodation of an individual's religious dress practice
30 or religious grooming practice is not reasonable if the
31 accommodation requires segregation of the individual from other
32 employees or the public.

33 (3) An accommodation is not required under this subdivision
34 if it would result in a violation of this part or any other law
35 prohibiting discrimination or protecting civil rights, including
36 subdivision (b) of Section 51 of the Civil Code and Section 11135
37 of this code.

38 (4) For an employer or other entity covered by this part to, in
39 addition to the employee protections provided pursuant to
40 subdivision (h), retaliate or otherwise discriminate against a person

1 for requesting accommodation under this subdivision, regardless
2 of whether the request was granted.

3 (m) (1) For an employer or other entity covered by this part to
4 fail to make reasonable accommodation for the known physical
5 or mental disability of an applicant or employee. Nothing in this
6 subdivision or in paragraph (1) or (2) of subdivision (a) shall be
7 construed to require an accommodation that is demonstrated by
8 the employer or other covered entity to produce undue hardship,
9 as defined in subdivision (u) of Section 12926, to its operation.

10 (2) For an employer or other entity covered by this part to, in
11 addition to the employee protections provided pursuant to
12 subdivision (h), retaliate or otherwise discriminate against a person
13 for requesting accommodation under this subdivision, regardless
14 of whether the request was granted.

15 (n) For an employer or other entity covered by this part to fail
16 to engage in a timely, good faith, interactive process with the
17 employee or applicant to determine effective reasonable
18 accommodations, if any, in response to a request for reasonable
19 accommodation by an employee or applicant with a known physical
20 or mental disability or known medical condition.

21 (o) For an employer or other entity covered by this part, to
22 subject, directly or indirectly, any employee, applicant, or other
23 person to a test for the presence of a genetic characteristic.

24 (p) Nothing in this section shall be interpreted as preventing the
25 ability of employers to identify members of the military or veterans
26 for purposes of awarding a veteran's preference as permitted by
27 law.

28 SEC. 2. Section 1106 of the Labor Code is amended to read:

29 1106. For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8,
30 1104, and 1105, "employee" includes, but is not limited to, any
31 individual employed by the state or any subdivision thereof, any
32 county, city, city and county, including any charter city or county,
33 and any school district, community college district, municipal or
34 public corporation, political subdivision, or the University of
35 California, or any covered worker as defined in subdivision (a) of
36 Section 1421.

37 SEC. 3. Part 4.2 (commencing with Section 1420) is added to
38 Division 2 of the Labor Code, to read:

PART 4.2. PROPERTY SERVICE WORKERS PROTECTION
ACT

CHAPTER 1. GENERAL

1420. (a) The Legislature finds and declares that in the janitorial industry in this state:

(1) Workers are widely victimized by wage theft, workplace sexual violence and harassment, failure to provide workers' compensation insurance, and other illegal practices perpetrated by unscrupulous contractors that fail to comply with existing labor standards laws.

(2) Workers in janitorial occupations often work alone at night, making them vulnerable to sexual violence and harassment while on the job, a condition that is exacerbated by low pay, low job mobility, and inadequate training. Adopting standards to protect workers from sexual violence and sexual harassment must be an obligation of all involved in the janitorial industry.

(3) Contractors, including subcontractors and franchisors, are often undercapitalized, change names, and abuse their corporate identity; making it difficult for victimized workers to secure meaningful legal relief.

(4) While some contractors comply with labor standards laws and invest in training and retaining a more skilled workforce, these contractors are undercut by unscrupulous competitors in a continual race to the bottom.

(5) It is in the public interest that contractors compete primarily on the basis of quality, efficiency, and innovation, and not through a race to the bottom that perpetuates substandard working conditions and lack of compliance with labor standards laws.

(6) Despite the state's many efforts over the years to bring underground economy practices in the janitorial industry under control, these practices persist.

(7) Absent additional regulation of labor standards by the state to prevent the undercutting of law-abiding contractors, the current situation is unlikely to change.

(b) It is the intent of the Legislature in enacting this part to:

(1) Direct janitorial contractors to post a notice regarding workplace sexual violence and harassment and to establish a system to require all janitorial workers and supervisors to at least annually

1 receive comprehensive in-person training regarding workplace
2 sexual violence and harassment tailored to the janitorial industry.
3 It is also the intent of the Legislature, in enacting this part, to direct
4 the Labor Commissioner, in consultation with labor organizations
5 that represent janitors and with nonprofits that advocate for policies
6 and standards to prevent workplace sexual violence and harassment
7 in the janitorial industry, to develop the notice and the worker and
8 supervisor education materials for these trainings in the languages
9 and literacy levels that are appropriate for the janitorial workforce,
10 and to establish standards for the trainers who are to deliver these
11 trainings.

12 (2) Direct the Occupational Safety and Health Standards Board
13 to require janitorial industry contractors to include the training,
14 indicated in paragraph (1) above, as part of their injury and illness
15 prevention plans.

16 (3) Establish a system of janitorial contractor registration to
17 encourage labor standards compliance and to establish prompt and
18 effective sanctions for violating this act.

19 1421. This part shall be known, and may be cited, as the
20 Property Service Workers Protection Act.

21 1422. For purposes of this part:

22 (a) (1) “Covered worker” means a janitor, including any
23 individual predominantly working, whether as an employee,
24 independent contractor, or a franchisee, as a janitor, as that term
25 is defined in the federal Service Contract Act Directory of
26 Occupations.

27 (2) “Covered workers” does not include any individual whose
28 work duties are predominantly final cleanup of debris, grounds,
29 and buildings near the completion of a construction, alteration,
30 demolition, installation, or repair work project, including, but not
31 limited to, street cleaners.

32 (b) “Current and valid registration” means an active registration
33 pursuant to Chapter 3 (commencing with Section 1430) that is not
34 void or suspended.

35 ~~(c) “Director” means the Director of the Department of Industrial~~
36 ~~Relations.~~

37 (c) “*Delinquent liability*” means any unsatisfied final judgment,
38 order, assessment, or determination by a court or by any federal,
39 state, or local administrative agency, including a confirmed
40 arbitration award, or accord, for unpaid compensation or backpay,

1 *for having committed sexual harassment of a covered worker or*
2 *for having violated any provision of this part, and for related*
3 *damages, interest, fines, and penalties. An employer shall not have*
4 *any delinquent liability for a final judgment, order, assessment,*
5 *determination, including a confirmed arbitration award, or accord*
6 *that is under appeal if the employer has secured the payment of*
7 *any amount eventually found due through a bond or other*
8 *appropriate means.*

9 (d) “Department” means the Department of Industrial Relations.

10 (e) “Director” means the Director of Industrial Relations.

11 ~~(e)~~

12 (f) (1) “Employer” means any person or entity that employs at
13 least one employee and one or more covered workers and that
14 enters into contracts, subcontracts, or franchise arrangements to
15 provide janitorial services. The term “employer” includes the term
16 “covered successor employer.”

17 (2) “Covered successor employer” means an employer who
18 meets one or more of the following criteria:

19 (A) Uses substantially the same facilities, equipment,
20 supervisors, and workforce to offer substantially the same services
21 to substantially the same clients as a predecessor employer. An
22 employer who has operated with a current and valid registration
23 for at least the preceding three years shall not be considered a
24 covered successor employer for using substantially the same
25 facilities, equipment, supervisors, and workforce to substantially
26 the same clients, if all of the following apply:

27 (i) The individuals in the workforce were not referred or supplied
28 for employment by the predecessor employer to the successor
29 employer.

30 (ii) The successor employer has not had any interest in, or
31 connection with, the operation, ownership, management, or control
32 of the business of the predecessor employer within the preceding
33 three years.

34 (B) Shares in the ownership, management, control of the
35 workforce, or interrelations of business operations with the
36 predecessor employer.

37 (C) Is an immediate family member of any owner, partner,
38 officer, licensee, or director of the predecessor employer or of any
39 person who had a financial interest in the predecessor employer.

40 “Immediate family member” means a spouse, parent, sibling, son,

1 daughter, uncle, aunt, niece, nephew, grandparent, grandson,
2 granddaughter, mother-in-law, father-in-law, brother-in-law,
3 sister-in-law, or cousin.

4 ~~(f)~~

5 (g) “Labor Commissioner” means the Labor Commissioner of
6 the Division of Labor Standards Enforcement of the Department.

7 ~~(g)~~

8 (h) “State Janitorial Contractor Registration Fund” or “fund”
9 means the State Janitorial Contractor Registration Fund established
10 in Chapter 5 (commencing with Section 1445).

11 ~~(h)~~

12 (i) “Standards board” means the Occupational Safety and Health
13 Standards Board.

14 ~~(i)~~

15 (j) “Supervisor” has the same meaning as in subdivision (t) of
16 Section 12926 of the Government Code.

17
18 CHAPTER 2. PROTECTIONS AGAINST WORKPLACE SEXUAL
19 VIOLENCE AND HARASSMENT
20

21 1425. (a) The Labor Commissioner, no later than January 1,
22 2018, shall do all of the following in consultation and partnership
23 with an advisory group that meets the requirements of Section
24 1427:

25 (1) Develop worker and supervisor agendas, handouts, trainer
26 guides, and other materials for a four-hour training regarding sexual
27 violence and sexual harassment that are appropriate for the
28 janitorial industry and the languages and literacy levels of covered
29 workers.

30 (A) Training materials shall include information related to:
31 definitions of workplace sexual violence and sexual harassment;
32 employers’ legal obligations to prevent workplace sexual violence
33 and sexual harassment; potential legal and disciplinary
34 consequences for employers and perpetrators of workplace sexual
35 violence and sexual harassment; community, mental health, and
36 legal resources locally available for those who have experienced
37 workplace sexual violence and sexual harassment; legal protections
38 available to immigrant workers subjected to workplace sexual
39 violence and sexual harassment, including, but not limited to, the
40 federal U nonimmigrant status known as U visa; prevention,

1 protection, and reporting strategies for workplace sexual violence
2 and sexual harassment; information on filing administrative
3 complaints with the appropriate state and federal agencies;
4 antiretaliation and other legal protections for those who have
5 experienced workplace sexual violence and sexual harassment;
6 information regarding the Injury and Illness Protection Program
7 of the Division of Occupational Safety and Health, and on the
8 employer's workplace sexual violence and sexual harassment
9 prevention plan, as described in Section 1426, and other topics as
10 the Labor Commissioner deems necessary for janitorial workers
11 and supervisors.

12 (B) The Labor Commissioner shall provide these materials in
13 all languages that are the language spoken at home of at least 2,000
14 janitors (ACS Occupation Code 4220) who reside in this state, as
15 determined by the most recent American Community Survey of
16 the United States Census Bureau.

17 (C) Beginning July 1, 2019, the Labor Commissioner shall
18 update these materials on or before July 1 of each year and make
19 them available to employers, covered workers, and the public
20 through, among other means, posting on its Internet Web site.

21 (2) Establish minimum qualification standards for trainers who
22 may deliver training, ~~including~~ *including*, but not limited to, a
23 minimum of ~~five~~ *three* years of experience conducting adult
24 education with ~~the demographics of the janitorial workforce. The~~
25 ~~collective bargaining agent that represents the employer's covered~~
26 ~~workers or the designee of the collective bargaining agent may~~
27 ~~deliver trainings.~~ *non-English speakers with a reading ability at*
28 *or below the fifth grade level in the language spoken at home. If*
29 *the minimum qualification standards are met, nothing in this*
30 *section shall be interpreted to preclude the collective bargaining*
31 *agent that represents the employer's covered workers or the*
32 *designee of the collective bargaining agent from delivering the*
33 *trainings.*

34 (3) Develop the size, form, and content of a notice to be posted
35 by employers consistent with the requirements of paragraph (3)
36 of subdivision (b), below, that shall inform covered workers of
37 their rights under the anti-sexual harassment laws, contain
38 examples of illegal employer conduct, and provide the telephone
39 numbers for nonprofit, nongovernmental organizations able to
40 provide help, referral services, training, and general information

1 to those who have experienced workplace sexual violence and
2 harassment or labor trafficking. The Labor Commissioner shall
3 develop an approved notice that has been translated into the
4 languages specified in subparagraph (B) of paragraph (1) of
5 subdivision (a) and shall make the notice available on its Internet
6 Web site.

7 (b) On and after July 1, 2018, all employers shall:

8 (1) Have a system to require all covered workers and supervisors
9 to, at least annually, receive ~~comprehensive, accurate and~~
10 ~~appropriate~~ in-person training lasting at least four hours regarding
11 workplace sexual violence and sexual harassment that provides
12 an opportunity for interactive questions and answers. These
13 mandatory trainings shall use the worker and supervisor materials
14 in paragraph (1) of subdivision (a) and shall be delivered in English
15 and in all primary languages spoken at home by at least 25 percent
16 of the employer's covered workers in the State of California.
17 Employers shall provide these in-person trainings at no cost to all
18 covered workers and to all supervisors of covered workers on at
19 least an annual basis and within 60 days of hire. Employers shall
20 pay employees and supervisors at their ~~regular~~ *hourly* rate of pay
21 for participating in these trainings or, if the training causes an
22 employee or supervisor to work overtime hours, at his or her
23 overtime rate of pay.

24 (2) Maintain accurate records for a minimum of three years
25 documenting the delivery of training by qualified trainers which
26 includes: certificates of completion for participants, sign-in sheets
27 with the participants' and qualified trainer's signatures; a listing
28 of the names, addresses, and telephone numbers of the participants
29 and of the qualified trainers, and a copy of the materials provided
30 and used in the training.

31 (3) Post and display prominently a notice that complies with
32 the requirements of paragraph (3) of subdivision (a) in all languages
33 that have been made available by the Labor Commissioner. The
34 notice shall be posted in a conspicuous place where the notice may
35 be read by covered workers during work hours, and in all places
36 where notices to covered workers are posted both physically and
37 electronically.

38 (c) The Labor Commissioner shall have broad authority to
39 enforce and implement the provisions of this chapter and may

1 establish through regulation any procedures necessary to carry out
2 such provisions.

3 1426. (a) The standards board, by no later than January 1,
4 2018, shall adopt standards developed by the Division of
5 Occupational Safety and Health, in consultation and partnership
6 with an advisory group that meets the requirements of Section
7 1427, that require an employer to adopt a workplace sexual
8 violence and sexual harassment prevention plan, as a part of its
9 injury and illness prevention plan, to protect covered workers from
10 workplace sexual violence and harassment.

11 (b) The standards adopted pursuant to subdivision (a) shall
12 include all of the following:

13 (1) A requirement that the workplace sexual violence and sexual
14 harassment prevention plan shall be in effect at all times and in
15 written form for all employers.

16 (2) A requirement that the workplace sexual violence and sexual
17 harassment prevention plan include specific means for janitors
18 who work during the nighttime or early morning hours to work in
19 pairs, or to have an equivalent form of protection.

20 (3) A requirement that the workplace sexual violence and sexual
21 harassment prevention plan include specific protections for covered
22 workers against workplace sexual violence and sexual harassment
23 from clients, coworkers, supervisors, building tenants, visitors,
24 and intruders.

25 (4) A system to, at least annually, assess and improve upon
26 factors that may contribute to, or help prevent workplace sexual
27 violence and sexual harassment.

28 (5) A requirement that all workplace sexual violence and sexual
29 harassment prevention plans, and the annual assessment of those
30 plans, be developed in consultation and partnership with covered
31 workers, including their recognized collective bargaining agents,
32 if any.

33 (6) A requirement that all workplace sexual violence and sexual
34 harassment prevention plans include training, notice, and
35 recordkeeping requirements consistent with the requirements of
36 Section 1425.

37 (7) A requirement that employers maintain records of complaints
38 and incidents of workplace sexual violence and sexual harassment
39 for a minimum period of three years, including the date, number
40 of employees involved, nature of the claim or incident, worksite

1 location, investigation steps, and results of the employer's
2 investigation.

3 ~~(8) A requirement that employers screen supervisors for~~
4 ~~convictions of any of the acts listed in subdivision (e) of Section~~
5 ~~290 of the Penal Code, for being listed on the registered sex~~
6 ~~offender database under the Sex Offender Registration Act (Chapter~~
7 ~~5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal~~
8 ~~Code), and for any civil judgments for having committed sexual~~
9 ~~harassment.~~

10 (9)
11 (8) A requirement that employers notify covered ~~workers,~~
12 ~~workers~~ who have complained of an incident of workplace sexual
13 violence or ~~harassment,~~ *harassment* of how to report such an
14 incident to an appropriate government agency or to law
15 enforcement as well as of any resources available to covered
16 workers for coping with such an incident, including, but not limited
17 to, employee assistance programs.

18 (c) This section does not limit the authority of the standards
19 board to adopt standards to protect employees from workplace
20 violence or harassment. Nothing in this section shall be interpreted
21 to preclude the standards board from adopting standards that
22 require other employers to adopt plans to protect employees from
23 workplace violence or harassment. Nothing in this section shall
24 be interpreted to preclude the standards board from adopting
25 standards that require an employer subject to this section, or any
26 other employer, to adopt a workplace violence or harassment
27 prevention plan that includes elements or requirements additional
28 to, or broader in scope than, those described in this section.

29 1427. The Labor Commissioner and the Division of
30 Occupational Safety and Health shall each appoint an advisory
31 group of stakeholders to assist them in carrying out their respective
32 responsibilities under this chapter. The advisory group shall include
33 representatives from at least one nonprofit organization that
34 advocates for policies and standards to prevent workplace sexual
35 violence and harassment in the janitorial industry, and from a labor
36 organization that represents covered workers. The term "nonprofit
37 organization" means a nonprofit entity exempt from taxation
38 pursuant to Section 501(c)(3) of the Internal Revenue Code (26
39 U.S.C. Sec. 501(c)(3)) or pursuant to Section 501(c)(5) of the

1 Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit
2 corporation.

3
4 CHAPTER 3. REGISTRATION OF JANITORIAL CONTRACTORS
5

6 1430. (a) The Labor Commissioner shall have broad authority
7 to interpret, enforce, and implement this part. This authority
8 includes, but is not limited to:

9 (1) Maintaining the janitorial contractor registry, list, and
10 Internet Web site.

11 (2) Conducting random and nonrandom audits or investigations
12 of complaints, or both audits and investigations.

13 (3) Issuing, renewing, denying renewal of, ~~suspending~~
14 *suspending*, and voiding an employer's registration and certificate
15 of registration.

16 (4) Issuing civil fines and stop orders.

17 (5) Other powers as determined by the Labor Commissioner
18 that are necessary to interpret, implement, and enforce *this chapter*
19 *and* Chapter 4 (commencing with Section 1440).

20 (b) The Labor Commissioner may establish through the adoption
21 of regulations any procedures it determines to be necessary to carry
22 out the provisions of this chapter and of Chapter 4 (commencing
23 with Section 1440).

24 1431. (a) On and after January 1, 2018, the Labor
25 Commissioner shall maintain an ~~on-line~~ *online* registration system
26 of employers integrated with the Labor Commissioner's system
27 for managing investigations.

28 (b) On and after July 1, 2018, no employer may conduct any
29 janitorial business without a current and valid registration under
30 this chapter and all employers shall be registered with the Labor
31 Commissioner pursuant to this chapter.

32 (c) On and after January 1, 2018, to qualify for a certificate of
33 registration or for a renewal of a certificate of registration under
34 this chapter, an employer shall, in a manner prescribed by the
35 Labor Commissioner, do all of the following:

36 (1) Register online with the Labor Commissioner and pay an
37 initial nonrefundable application fee of ~~one thousand dollars~~
38 ~~(\$1,000)~~ *five hundred dollars (\$500)* and an annual renewal fee
39 of ~~one thousand dollars (\$1,000)~~ *five hundred dollars (\$500)* on
40 or before July 1 of each year thereafter. The director may adjust

1 the initial registration and renewal fees no more than annually to
2 support the costs specified in Section 1450.

3 (2) Execute a written application, subscribed and sworn to by
4 the employer under penalty of perjury under the laws of this state
5 that contains all of the following:

6 (A) The name of the employer and, if applicable, its fictitious
7 business name.

8 (B) The form of the employer and, if a corporation, all of the
9 following:

10 (i) The date of incorporation.

11 (ii) The state in which incorporated.

12 (C) If a foreign corporation, the date the articles of incorporation
13 were filed with the California Secretary of State.

14 (D) Whether the corporation is in good standing with the
15 California Secretary of State.

16 (E) The federal employer identification number (FEIN) and the
17 state employer identification number (SEIN) of the employer.

18 (F) The employer's business address, telephone number, fax
19 number, and email address.

20 (G) The names, residential addresses, business addresses,
21 telephone numbers, email addresses and ~~Social Security~~ *social*
22 *security* numbers, federal employer identification number ~~(FEIN)~~
23 *(FEIN)*, or the state employer identification number (SEIN) of the
24 following persons:

25 (i) All corporate officers, if the employer is a corporation.

26 (ii) All persons exercising management responsibility in the
27 employer's office, regardless of the form of the business entity.

28 (iii) The franchisor, if the employer is a franchise.

29 (iv) All shareholders holding at least 10 percent of the
30 outstanding voting shares of the employer, if the employer has
31 shareholders, and the actual percent owned by each of those
32 ~~shareholders~~ *shareholders, except that in the case of a publicly*
33 *traded corporation, a listing of principal officers shall suffice.*

34 (v) All persons who have a financial interest of 10 percent or
35 more in the employer's business, regardless of the form of business
36 entity, and the actual percentage owned by each of those ~~persons~~.
37 *persons, except that in the case of a publicly traded corporation,*
38 *a listing of principal officers shall suffice.*

39 (H) The total number of covered workers who are employees
40 of the employer.

1 (I) The total number of covered workers who are independent
2 contractors of the employer.

3 (J) The total number of covered workers who are franchisees
4 of the employer.

5 (K) The employer's total annual payroll-related expenses over
6 the last 12 months.

7 (L) Whether the employer uses a professional employer
8 organization or leasing employer.

9 ~~(M) Whether the employer has instituted an alternative work~~
10 ~~week pursuant to Section 511.~~

11 ~~(N)~~

12 (M) Name, address, and telephone number of any recognized
13 collective bargaining agent representing any of the employer's
14 covered workers, and whether that collective bargaining agent
15 represents all of the employer's covered workers in California.

16 ~~(O)~~

17 (N) Whether the application is for a new or renewal registration
18 and, if the application is for a renewal, the prior registration
19 number.

20 ~~(P)~~

21 (O) Whether the employer is also a covered successor employer,
22 and, if so, the information in subparagraphs (A) to (C), inclusive,
23 (E), and (F) for the predecessor employer.

24 ~~(Q)~~

25 (P) Certification that the information submitted to the Labor
26 Commissioner under this paragraph and paragraph (3) is complete.

27 ~~(R)~~

28 (Q) A written pledge under penalty of perjury under the laws
29 of the State of California that the employer shall:

30 (i) Comply with all applicable federal, state, and local laws and
31 regulations during the upcoming year, including, but not limited
32 to, laws regarding health and safety, labor and employment, wage
33 and hour, and licensing and registration laws that affect covered
34 workers, including, but not limited to, Sections 96.8, 98, 98.6, and
35 98.7, Section, 238 to 238.5, inclusive, Sections 244, 558.1, 1019,
36 and 1024.6, Section 1060 to Section 1065, inclusive, and Sections
37 1102.5 and 2810 of this code, Section 690.020 to Section 690.050,
38 inclusive, of the Code of Civil Procedure, and Section 494.6 of
39 the Business and Profession Code; and timely notify the Labor
40 Commissioner as required by subdivision (d).

(ii) Timely notify the Labor Commissioner as required by subdivision (d).

~~(S)~~

(R) Such other information as the Labor Commissioner requires for the administration and enforcement of this ~~chapter~~. *chapter and Chapter 4 (commencing with Section 1440).*

~~(T)~~

(S) A post office box and mail drop are not acceptable responses to subparagraphs (F), (G), and (I) above.

(3) Execute a written ~~report~~ *statement* that provides evidence or ~~disclosures~~ *disclosure* under penalty of perjury under the laws of the State of ~~California, as are necessary~~ *California* to establish all of the following:

(A) The employer has workers' compensation coverage that complies with Division 4 (commencing with Section 3200) and includes sufficient coverage for every covered worker. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) ~~The employer does not have any delinquent liability to a covered worker or the state for any assessment of unpaid compensation or backpay, for having committed sexual harassment of a covered worker, or for having violated any provision of this part, or, in all cases, for related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award or a settlement agreement. If the employer is a covered successor employer, then the employer shall establish that both the covered successor employer and the predecessor employer do not have such delinquent liability. However, for purposes of this subparagraph, the employer shall not be disqualified for any judgment, order, or determination that is under appeal or for any settlement agreement that is being adjudicated, the employer has secured the payment of any amount eventually found due through a bond or other appropriate means.~~ *has satisfied the requirement of either of the following:*

(i) *If the employer does not have any delinquent liability to a covered worker or the state, then the employer shall execute a written statement in accordance with this paragraph that the employer is not liable. If the employer is a covered successor*

1 employer, then the employer shall verify that both the covered
2 successor employer and the predecessor employer do not have
3 delinquent liability.

4 (ii) If the employer does have delinquent liability, as described
5 in clause (i), that the employer has on file with the Labor
6 Commissioner a bond sufficient to guarantee payment for any
7 delinquent liability applicable under clause (i) or, in lieu thereof,
8 a notarized copy of an accord with the covered worker or the state
9 to whom the employer owes the delinquent liability. If the accord
10 provides for the delinquent liability to be paid for in installments,
11 then the employer must provide evidence or disclosures under
12 penalty of perjury under the laws of this state that it is current on
13 any installment payments under the accord.

14 (C) Any administrative merits determinations, arbitral awards
15 or decisions, civil judgments, or criminal judgments rendered
16 against the employer within the preceding five-year period for
17 assessments for unpaid compensation or backpay, for having
18 committed sexual harassment of a covered worker, or for having
19 violated any provision of this part, or, in all cases, for related
20 damages, interests, fines, and penalties. A covered successor
21 employer shall provide this information both for itself and for its
22 predecessor employer. At minimum, the employer shall provide:

- 23 (i) The law violated.
24 (ii) The case number, inspection number, charge number, docket
25 number, or other unique identification number.
26 (iii) The date rendered.
27 (iv) The name of the court, arbitrator, agency, board, or
28 commission rendering the determination or decision.
29 (v) A copy of the administrative merits determination, arbitral
30 award or decision, or civil or criminal judgment document.

31 (D) On and after July 1, 2018, the employer has a sexual
32 violence and sexual harassment prevention plan that meets the
33 requirements of subdivision (b) of Section 1426.

34 ~~(E) Within the last 12 months, the employer has screened all~~
35 ~~supervisors for convictions of any of the acts listed in subdivision~~
36 ~~(e) of Section 29 of the Penal Code, for being listed on the~~
37 ~~registered sex offender database under the Sex Offender~~
38 ~~Registration Act (Chapter 5.5 (commencing with Section 290) of~~
39 ~~Title 9 of Part 1 of the Penal Code), and for any civil judgments~~
40 ~~for having committed sexual harassment.~~

1 ~~(F)~~

2 (E) On and after July 1, 2018, the employer is in compliance
3 with all the requirements of Section 1425.

4 ~~(G)~~

5 (F) Other information as the Labor Commissioner requires for
6 the administration and enforcement of this chapter and of Chapter
7 4 (commencing with Section 1440).

8 (d) After an employer is registered or has renewed its
9 registration, the employer shall notify the Labor Commissioner in
10 writing within 90 days of:

11 (1) Any delinquent liability the employer owes to a covered
12 worker or the state for any assessment of unpaid compensation or
13 backpay, for having committed sexual harassment of a covered
14 worker, or for having violated any provision of this part, or in all
15 cases, for related damages, interest, fines, or penalties pursuant to
16 any final judgment, order, determination by a court or any federal,
17 state, or local administrative agency, including a confirmed
18 arbitration award, or settlement agreement. *state*.

19 (2) Any updated responses to the registration or renewal
20 application or ~~report~~ *statement* if any change occurs that would
21 change any response in the completed application or ~~report~~
22 *statement* the employer submitted under paragraphs (2) and (3) of
23 subdivision (c).

24 (e) At least 30 days prior to the expiration of each employer's
25 registration, the Labor Commissioner shall mail or email a renewal
26 notice to the last known mailing or email address of the employer.
27 However, the omission of the Labor Commissioner to provide the
28 renewal notice in accordance with this subdivision shall not excuse
29 an employer from making timely application for renewal of
30 registration, shall not be a defense in any action or proceeding
31 involving failure to renew registration, and shall not subject the
32 Labor Commissioner to any legal liability.

33 (f) Fees received pursuant to this section shall be deposited in
34 the State Janitorial Contractor Registration Fund established in
35 Chapter 5 (commencing with Section 1450) and shall be used only
36 for the purposes specified in that chapter.

37 1432. On and after July 1, 2018, the employer shall:

38 (a) Maintain records of the sign-in sheets and materials
39 consistent with paragraph (2) of subdivision (b) of Section 1425.

1 These records shall be available for inspection by the Labor
2 Commissioner.

3 (b) Post and display prominently in a conspicuous place where
4 it may be read by covered workers during work hours, and in all
5 places where notices to covered workers are posted both physically
6 and electronically:

7 (1) By July 1, 2018, the notice in paragraph (3) of subdivision
8 (b) of Section 1425.

9 (2) By July 1, 2018, a copy of the employer's current certificate
10 of registration.

11 1433. (a) The Labor Commissioner shall not grant registration
12 or renewal of registration to any employer who:

13 (1) Lacks workers' compensation coverage that meets the
14 requirements of subparagraph (A) of paragraph (3) of subdivision
15 (b) of Section 1431.

16 (2) Has any delinquent liability to a worker or to the ~~state as~~
17 ~~described in paragraph (1) of subdivision (d) of Section 1431.~~
18 ~~state.~~

19 (3) Has not submitted the complete fees, application,
20 information, disclosures under penalty of perjury, and evidence
21 as required by subdivisions (b) to (d), inclusive, of Section 1431.

22 (4) Who has willfully made false statements in its application
23 or ~~report statement~~ to qualify for a certificate of registration or for
24 a renewal of a certificate of registration under Section 1431.

25 (b) The Labor Commissioner shall suspend a registration if it
26 is found that:

27 (1) An employer willfully made false statements in its
28 application or its ~~report statement~~ submitted for a certificate of
29 registration or for a renewal of a certificate of registration under
30 Section 1431.

31 (2) The employer failed to notify the Labor Commissioner in
32 writing within 90 days of any delinquent liability as required by
33 paragraph (1) of subdivision (d) of Section 1431. If the employer
34 failed to notify the Labor Commissioner within 90 days, the
35 employer's registration shall be automatically suspended on the
36 date that the Labor Commissioner is informed, or is made aware
37 of the delinquent liability. The suspension shall not be removed
38 until proof of satisfaction of the delinquent liability, or in lieu
39 thereof, a notarized copy of an accord is submitted to the Labor
40 Commissioner. If the employer notifies the Labor Commissioner

1 in writing within 90 days of the imposition of any delinquent
2 liability, the employer shall, as a condition to the continual
3 maintenance of the registration, have on file with the Labor
4 Commissioner a bond sufficient to guarantee payment for any
5 delinquent liability applicable under this paragraph.

6 (A) By operation of law, failure to maintain the bond or failure
7 to abide by the accord shall result in the automatic suspension of
8 any registration to which this paragraph applies. *If the accord*
9 *provides for the delinquent liability to be paid in instalments, and*
10 *an installment payment is not made, then this shall be deemed to*
11 *be failure to abide by the accord.*

12 (B) A registration that is suspended for failure to comply with
13 the provisions of this subdivision can only be reinstated when
14 proof of satisfaction of all debts is made, or when a notarized copy
15 of an accord has been filed as set forth in this subdivision.

16 (C) The Labor Commissioner shall take the actions required by
17 this paragraph upon notification by any party having knowledge
18 of the outstanding judgment upon a showing of proof of the
19 judgment.

20 (3) Lacks workers' compensation coverage that meets the
21 requirements of subparagraph (A) of paragraph (3) of subdivision
22 (c) of Section 1431.

23 (c) The Labor Commissioner may suspend a registration if:

24 (1) The employer has violated or failed to comply with the
25 requirements of subdivision (b) of Section 1425, Section 1426, or
26 *the employer and its predecessor employer, if any, have a record*
27 *of more than one violation of Section 1432.*

28 (2) The employer has made any misrepresentations or false
29 statements in his or her registration or registration renewal
30 application, or in response to the Labor Commissioner's request
31 for information.

32 (3) The employer has failed to respond to the Labor
33 Commissioner's request for information within 30 days of such a
34 request.

35 (4) The employer has failed to notify or provide the Labor
36 Commissioner with updated responses within 90 days as required
37 by paragraph (2) of subdivision (d) of Section 1431.

38 (d) *Before suspending any registration, the Labor Commissioner*
39 *shall hold proceedings in accordance with Chapter 4.5*
40 *(commencing with Section 11400) or Chapter 5 (commencing with*

1 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
2 *Code as applicable, and the commissioner shall have all of the*
3 *powers granted therein.* When determining whether to suspend or
4 reissue a registration, and when determining the duration of a
5 suspension, the Labor Commissioner shall take into consideration
6 evidence and other information submitted by the employer, covered
7 workers, the employer's collective bargaining representative, if
8 any, and a labor-management cooperation committee established
9 pursuant to the federal Labor Management Cooperation Act of
10 1978 (Section 175a of Title 29 of the United States Code) whose
11 members include a collective bargaining agent that represents
12 covered workers. ~~The determination by the Labor Commissioner~~
13 ~~shall be reviewable only for abuse of discretion.~~

14 (e) ~~The Labor Commissioner may reissue a registration after~~
15 ~~suspension only under the following circumstances: upon~~
16 ~~application in the manner described by the Labor Commissioner.~~

17 (1) ~~To an individual upon application in a manner prescribed~~
18 ~~by the Labor Commissioner.~~

19 (2) ~~To a partnership upon application in a manner prescribed~~
20 ~~by the Labor Commissioner if there is no change in the partners~~
21 ~~or in the partnership structure.~~

22 (3) ~~To a corporation upon application in a manner prescribed~~
23 ~~by the Labor Commissioner if there is no change in the status of~~
24 ~~the corporation as registered with the Secretary of State.~~

25 (4) ~~To a limited liability company upon application in a manner~~
26 ~~prescribed by the Labor Commissioner if there is no change in the~~
27 ~~status of the company as registered with the Secretary of State.~~

28 1434. (a) An employer's registration is void when:

29 (1) The employer ceases conducting any janitorial business.

30 (2) The employer changes its form of legal entity.

31 (3) The employer transfers its registration.

32 (4) The employer's registration has expired and no renewal has
33 been issued.

34 (5) The employer fails to return the renewal application, fees,
35 ~~or report statement~~ under subdivision (c) or Section 1431 that was
36 rejected by the Labor Commissioner for insufficiency or
37 incompleteness within 90 days from the date of original notice or
38 rejection.

39 (b) The void date on an application may be extended up to 90
40 days upon documented evidence by the employer that the failure

1 to complete the application process was due to a medical
2 emergency or other circumstance beyond the control of the
3 employer.

4 (c) A registration voided pursuant to this section shall remain
5 in the possession of the Labor Commissioner for the period as he
6 or she deems necessary and shall not be returned to the employer.
7 Any reapplication for a registration shall be accompanied by the
8 fee fixed by this chapter.

9 1435. (a) On and after July 1, 2018, on its Internet Web site,
10 the Labor Commissioner shall maintain a regularly updated,
11 searchable online database of all registered employers. The
12 database will have the capability to search all data, at minimum,
13 for the past 10 years. The database shall include all the following
14 information:

15 (1) The name, address, telephone number, and registration
16 number of the employer.

17 (2) If the employer is a successor employer, the registration
18 number of any predecessor employers.

19 (3) The business addresses, telephone numbers, and email
20 addresses of the persons that the employer submitted under
21 subparagraph (G) of paragraph (2) of subdivision (c) of Section
22 1431, and, if the employer's application listed anyone in clauses
23 (iv) and (v), the percent financial interest owned by that person or
24 shareholder.

25 (4) The current status and effective dates of the employer's
26 registration.

27 (5) The identity of the employer's recognized collective
28 bargaining agent, if any, and whether that collective bargaining
29 agent represents all of the employer's covered workers in
30 California.

31 (6) A listing of any past denials, suspensions, or voidances of
32 the employer's registration, including the effective dates of those
33 past denials, suspensions, or voidances as well as the basis for
34 them

35 (7) A listing of any civil fines or stop orders issued against the
36 employer under this part, including the dates of those fines or stop
37 orders, and the basis for them.

38 (8) Other information as deemed necessary by the Labor
39 Commissioner.

(b) On and after July 1, 2019, on the department's Internet Web site, the Labor Commissioner shall maintain a searchable online database regarding its compliance and enforcement activities. The Labor Commissioner shall update this information on or before July 1 of every year. The database shall have the capability to search all data, at minimum, for the past 10 years and shall include all the following information:

(1) The total number of employers with current and valid registration that meets the requirements under Chapter 3 (commencing with Section 1430).

(2) The total number of employers whose registration or renewal of registration was denied, suspended, or voided, within the last 12 months, categorized by the basis of that denial, suspension, or voidance, and, if applicable, the duration of the suspension.

(3) The total monetary amount of fines, the total number of fines, and the total number of employers that the Labor Commissioner has cited under Section 1441 within the last 12 months, categorized by the basis of those fines.

(4) The total number of employers who have been issued stop orders under this part over the last 12 months, categorized by the basis of those stop orders.

(5) The total number of audits initiated and completed by the Labor Commissioner under this part, within the last 12 months.

(6) The total number of complaints investigated by the Labor Commissioner under Section 1444, within the last 12 months.

(7) Other information as deemed necessary by the Labor Commissioner.

CHAPTER 4. ENFORCEMENT

1440. The Labor Commissioner shall establish a Property Services Compliance Unit to enforce this part, including, but not limited to maintaining and enforcing the janitorial contractor registry, list, and Internet Web site, conducting audits, and investigating complaints.

1441. (a) On and after July 1, 2018, an employer who fails to register or to renew its registration or that has a void or suspended registration under this part is subject to a civil fine of two hundred dollars (\$200) for each calendar day, or portion thereof, that the employer conducts any janitorial business without registering or

1 ~~renewing its registration or with a void or suspended registration.~~
2 ~~lacks a current and valid registration under this part is subject to~~
3 ~~a civil fine of two thousand five hundred dollars (\$2,500) if the~~
4 ~~employer conducts any janitorial business without a current and~~
5 ~~valid registration under this part.~~

6 (b) An employer who violates any of the other requirements of
7 this chapter or of Chapter 3 (commencing with Section 1430) is
8 subject to a civil fine of ~~not more than two hundred dollars (\$200)~~
9 ~~for each calendar day, or portion thereof, that the employer is in~~
10 ~~violation of either chapter, with the exception of the posting and~~
11 ~~recordkeeping requirements of Section 1432, in which case the~~
12 ~~employer shall be subject to civil fines of up to seven thousand~~
13 ~~dollars (\$7,000) per violation.~~ *two thousand five hundred dollars*
14 *(\$2,500).*

15 (c) *Any employer that has been previously assessed pursuant*
16 *to this section shall be subject to an additional penalty of one*
17 *hundred dollars (\$100) for each calendar day that the employer*
18 *conducts business in violation of this chapter or of Chapter 3*
19 *(commencing with Section 1430), however, this amount shall not*
20 *exceed one hundred thousand dollars (\$100,000).*

21 ~~(e) The determination by the Labor Commissioner as to the~~
22 ~~amount of the fines shall be reviewable only for abuse of discretion.~~

23 (d) These civil fines may be assessed under a citation issued by
24 the Labor Commissioner and the procedures for issuing, contesting,
25 and enforcing judgments shall be the same as those set forth in
26 Section 1197.1.

27 1442. On and after July 1, 2018, if an employer is conducting
28 *any janitorial business without a current and valid registration*
29 *under this part, the Labor Commissioner may issue and serve on*
30 *that employer a stop order prohibiting the use of labor by that*
31 *employer until the employer acquires a current and valid*
32 *registration, provided that the stop order would not compromise*
33 *or imperil public safety or the life, health, and care of vulnerable*
34 *individuals. The stop order shall also prohibit the employer from*
35 *continuing to provide services by conducting any janitorial business*
36 *using the labor of another business, contractor, or subcontractor.*
37 *The stop order shall become effective immediately upon the service*
38 *of the order. Any worker affected by the work stoppage shall be*
39 *paid by the employer for such time lost, not exceeding 10 days,*
40 *pending compliance by the employer. The employer may protest*

1 the stop order by making and filing with the Labor Commissioner
2 a written request for a hearing within 20 days after service of the
3 stop order. The hearing shall be held within five days from the
4 date of filing the request. The Labor Commissioner shall notify
5 the employer of the time and place of the hearing by mail. At the
6 conclusion of the hearing, the stop order shall be immediately
7 affirmed or dismissed, and within 24 hours thereafter, the Labor
8 Commissioner shall issue and serve on all parties to the hearing
9 by registered or certified mail a written notice of findings,
10 accompanied by written findings. A writ of mandate may be taken
11 from the findings to the appropriate superior court. The writ shall
12 be taken within 45 days after the mailing of the notice of findings
13 accompanied by written findings. The Labor Commissioner may
14 file an action in superior court for injunctive and other appropriate
15 relief to enforce the stop order and shall be entitled to recovery of
16 costs and attorney's fees if any relief is obtained by the Labor
17 Commissioner.

18 1443. (a) In a manner prescribed by the Labor Commissioner,
19 the Labor Commissioner may select registered and unregistered
20 employers as audit subjects for the purpose of determining
21 compliance with this part. Audit subjects may be selected in any
22 order, and routine audits may be scheduled in a manner to best
23 minimize travel expenses and use audit personnel efficiently.

24 (b) The Labor Commissioner may select audit subjects using
25 random and nonrandom selection methods. The final selection of
26 audit subjects shall be within the discretion of the Labor
27 Commissioner.

28 (c) The Labor Commissioner may investigate information or
29 complaints in addition to conducting an audit.

30 1444. The Labor Commissioner shall conduct a reasonable and
31 timely investigation upon receiving a complaint regarding a
32 potential violation of the requirements of this part from a covered
33 worker, a collective bargaining agent that represents covered
34 workers, or a labor management cooperation committee established
35 pursuant to the federal Labor Management Cooperation Act of
36 1978 (Section 175a of Title 29 of the United States Code) whose
37 members include a collective bargaining agent that represents
38 covered workers.

39 ~~1445. (a) Any employer that conducts any janitorial business~~
40 ~~after its registration has been suspended, revoked, or denied~~

1 ~~reissuance is guilty of an offense punishable by a fine of not less~~
2 ~~than ten thousand dollars (\$10,000), or by imprisonment for not~~
3 ~~less than six months and no more than one year, or both.~~

4 ~~(b)–~~

5 1445. Any employer, owner, director, officer, or managing
6 agent of the employer who fails to observe a stop order issued and
7 served upon him or her pursuant to ~~Section 1438~~ *this part* is guilty
8 of a misdemeanor punishable by imprisonment in county jail not
9 exceeding 60 days or by a fine not exceeding ten thousand dollars
10 (\$10,000), or both. For the purposes of this section, the term
11 “managing agent” has the same meaning as in subdivision (b) of
12 Section 3294 of the Civil Code.

13
14 CHAPTER 5. STATE JANITORIAL CONTRACTOR REGISTRATION
15 FUND
16

17 1450. (a) The State Janitorial Contractor Registration Fund is
18 hereby created as a special fund in the State Treasury to be
19 available upon appropriation of the Legislature for the purposes
20 established in subdivision (b). All registration fees collected
21 pursuant to Section 1431, all civil fines collected pursuant to
22 ~~Section 1437~~, 1441, and any other moneys as are designated by
23 statute or order shall be deposited in the fund.

24 (b) Moneys in the fund shall be used only for the following
25 purposes:

26 (1) The reasonable costs of administering the registration of
27 janitorial contractors pursuant to Chapter 3 (commencing with
28 Section 1430) and Chapter 4 (commencing with Section 1440) by
29 the Labor Commissioner.

30 (2) The costs and obligations associated with the administration
31 and enforcement of this part by the Labor Commissioner.

32 (c) The annual employer registration renewal fee specified in
33 paragraph (1) of subdivision (c) of Section 1431, and any adjusted
34 application renewal fee, shall be set in amounts that are sufficient
35 to support the annual appropriation approved by the Legislature
36 for the fund and not result in a year-end fund balance greater than
37 25 percent of the appropriation. Any year-end balance in the fund
38 greater than 25 percent of the appropriation shall be applied as a
39 credit when determining any fee adjustments for the subsequent
40 fiscal year.

(d) To provide adequate cash flow for the purposes specified in subdivision (b), the Director of Finance, with the concurrence of the Secretary of the Labor and Workforce Development Agency, may approve a short-term loan each fiscal year from the Labor and Workforce Development Fund to the State Janitorial Contractor Registration Fund.

(1) The maximum amount of the annual loan allowable may be up to, but shall not exceed, 50 percent of the appropriation authority of the fund in the same year in which the loan was made.

(2) For the purposes of this section, a “short-term loan” is a transfer that is made subject to both of the following conditions:

(A) Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(B) Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.